

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

ERNEST VANDALL,

Plaintiff,

v.

Civil Action No. 5:17-cv-03544

WELLS FARGO BANK, N.A.,

Defendant.

**DEFENDANT WELLS FARGO BANK, N.A.'S
MOTION IN LIMINE REGARDING LOCATION, HOMETOWN,
COMPETENCE, OR SIZE OF COUNSEL AND MEMORANDUM IN SUPPORT**

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") by counsel, moves for entry of an Order prohibiting, at the trial of the above-styled action, any mention of or reference to, by any party herein, in opening statements, in the questioning of witnesses, in documentary evidence and exhibits, in closing arguments or in any other manner before the jury, location, hometown, competence, or size of counsel.

ARGUMENT

Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Fed. R. Evid. 401. However, even relevant evidence may be excluded if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

Any argument regarding location, hometown, competence, or size of counsel would be proposed solely in an attempt to bias or incite the jury into rendering a verdict based not upon the

evidence, but upon the jurors' passions and prejudices. *See, e.g., Ott v. City of Milwaukee*, No. 09cv-870, 2015 U.S. Dist. LEXIS 32614 (E.D. Wis. Mar. 17, 2015) (excluding any references to the party's attorneys being out of town); *Lewis v. State*, 905 So. 2d 729, 736 (Miss. Ct. App. 2004) (sustaining objection to references to defense counsel being from out-of-town, such as "lawyers from Memphis" or "it may be how they do it in Memphis"); *State v. Hamrick*, 216 W. Va. 477, 480 (W. Va. 2004) ("Rule 3.4(e) of the West Virginia Rules of Professional Conduct states, in pertinent part, that lawyer shall not 'in trial ... assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil judgment or the guilt or innocence of an accused.'"). Evidence of location, hometown, competence, or size of counsel has no legal relevance and, even if it did, it is substantially outweighed by the risks of unfair prejudice, thereby rendering such evidence inadmissible.

CONCLUSION

For all of the above reasons, Defendant Wells Fargo Bank, N.A. respectfully requests that the Court grant this motion to exclude any mention of or reference to the location, hometown, competence, or size of counsel.

Dated: June 1, 2018

Respectfully submitted,

WELLS FARGO BANK, N.A.

By: /s/ Jason E. Manning
Of Counsel

John C. Lynch (WV Bar No. 6627)
Jason E. Manning (WV Bar No. 11277)
Jonathan M. Kenney (WV Br No. 12458)
Counsel for Defendant Wells Fargo Bank, N.A.

TROUTMAN SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Telephone: (757) 687-7564
Facsimile: (757) 687-1524
Email: john.lynch@troutman.com
Email: jason.manning@troutman.com
Email: jon.kenney@troutman.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

ERNEST VANDALL,

Plaintiff,

v.

Civil Action No. 5:17-cv-03544

WELLS FARGO BANK, N.A.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Counsel for Plaintiff

Jeffrey V. Mehalic, Esq.
LAW OFFICES OF JEFFREY V. MEHALIC
346 Patteson Drive, No. 228
Morgantown, West Virginia 265-3203
Email: jeff@mehaliclaw.com
Telephone: (304) 346-3462

/s/ Jason E. Manning

Jason E. Manning (WV Bar No. 11277)
TROUTMAN SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Telephone: (757) 687-7564
Facsimile: (757) 687-1524
Email: jason.manning@troutman.com